



South Dakota One Call Notification Board

Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

November 16, 2006

RECEIVED

NOV 20 2006

Rex Gilles
18798 Avance Rd.
Red Owl, SD 57777

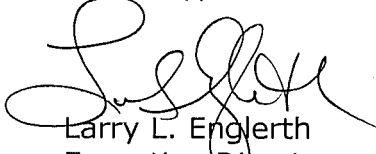
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Marty Huether
Golden West Telecommunications
415 Crown St.
Wall, SD 57790

The Enforcement Committee recommendation to resolve Complaint OC06-006 has been accepted by both parties involved in the complaint. The order closing this Complaint is attached.

This order will close all action on this complaint with the exception that the suspended portion of the penalty would be applicable should a further violation occur prior to November 10, 2007. Payment of the penalty was made on December 16, 2006.

Sincerely,



Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION

OC06-006

Golden West Telecommunications vs. Rex Gilles

FINDINGS:

OC06-006

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

Allegation is made by Golden West Telecommunications that Rex Gilles commenced excavation in at the Ed Miller property in Meade County (Section 31, Township 12N, Range 16E) without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Rex Gilles did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System. Mr. Gilles did provide a statement by Ed Miller stating that the excavation was commenced after he advised Mr. Gilles that no facilities were present in the excavation area.

In reviewing the complaint filed by Golden West Telecommunications and the response from Rex Gilles, the committee determined the following:

The statement submitted from Ed Miller does not relieve Mr. Gilles of his responsibility to provide notification of the intent to excavate as required by SDCL 49-7A-5, therefore the Enforcement Committee of the South Dakota One Call Board found that:

Rex Gilles had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found that there was probable cause that Rex Gilles had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC06-006

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found there was probable cause that Rex Gilles had violated SDCL 49-7A-5 by commencing excavation at the Ed Miller property in Meade County (Section 31, Township 12N, Range 16E) without providing advance notification to the South Dakota One Call System as required by statute.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of five hundred dollars (\$500) with three hundred dollars (\$300) suspended on the following conditions:

1. Rex Gilles fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC06-006 by both parties.
2. Rex Gilles fully complies with the resolution of Complaint OC06-006 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC06-006.

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC06-006

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC06-006.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-006. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-006. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON NOVEMBER 24, 2006.


SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC06-006

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-006 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature - Rex Gilles

11-11-06

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-006 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC06-006.

Signature - Rex Gilles

Date

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC06-006

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC06-006.

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OC06-006

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-006 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature – Golden West

11/6/06

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-006 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC06-006.

Signature – Golden West

Date

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE)
COMPLAINT AGAINST REX GILLES)

ORDER
OC06-006

On September 26, 2006, the South Dakota Public Utilities Commission received a complaint from Golden West Telecommunications against Rex Gilles. Rex Gilles did not dispute the allegation in the complaint that they had excavated without providing advance notice to the South Dakota One Call System but did provide background information on how the violation occurred and his previous history of utilizing the South Dakota One Call System.

On November 3, 2006, the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC06-006 in regards to the allegation that Rex Gilles has violated SDCL 49-7A-5. The Enforcement Committee recommended a five hundred dollar (\$500.00) penalty with three-hundred dollars (\$300.00) suspended on the grounds that Rex Gilles fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of Rex Gilles signing the Enforcement Committee Action Agreement and that Rex Gilles fully comply with the resolution of this complaint by making payment of two-hundred dollars (\$200) within thirty days of the issuance of this order.

All interested parties agreed with the recommendations of the Enforcement Committee. By November 11, 2006, all interested parties had signed the Enforcement Committee Action Agreement.

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement and the signed Acceptance of the recommended resolutions by both parties shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED that the docket in this matter shall be closed.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, 49-7A-26.

Dated at Sioux Falls, South Dakota, this 16th day of November, 2006.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

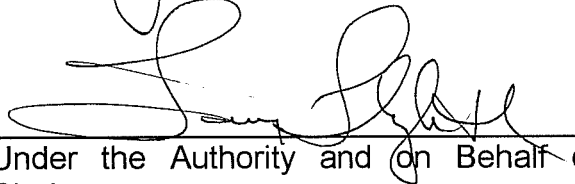
By: 

Larry Englerth, Executive Director

Date: November 26, 2006

BY ORDER OF THE SD ONE-CALL BOARD:


JERRY SCHROEDER, Chairman


Under the Authority and on Behalf of the
Chairman

LARRY ENGLERTH, Executive Director

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE)
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ORDER
OC06-006

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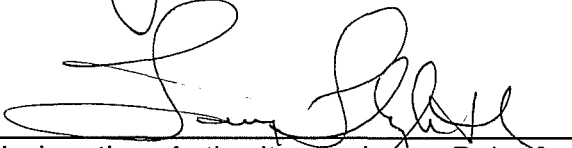
By: 

Larry Englerth, Executive Director

Date: November 26, 2006

BY ORDER OF THE SD ONE-CALL BOARD:


JERRY SCHROEDER, Chairman


Under the Authority and on Behalf of the
Chairman

LARRY ENGLERTH, Executive Director